

PAIUTE OIL AND MINING CORP.

IBLA 82-888

Decided December 14, 1982

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U-50859.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Lands Subject to

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

APPEARANCES: R. Dennis Ickes, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Paiute Oil and Mining Corporation (Paiute) appeals from the April 21, 1982, decision of the Utah State Office, Bureau of Land Management (BLM), rejecting its noncompetitive oil and gas lease offer U-50859, embracing sec. 24, T. 9 S., R. 17 E., Salt Lake meridian, which had been filed on March 22, 1982. BLM stated in the decision that the offer to lease was rejected in its entirety because the lands sought to be leased were included in oil and gas lease U-39711.

In the statement of reasons for appeal counsel for Paiute states:

On * * * March 1, 1969, the BLM issued a noncompetitive lease U-7755 to Pacific Transmission Supply Company, a seventy five percent (75%) interest holder, and Chorney Oil Co, a twenty five percent (25%) interest holder. On * * * February 13, 1978, U-39711 was segregated from U-7755 and U-39711's primary term was extended to January 30, 1980, and so long thereafter as oil and gas were produced in commercial quantities. PAIUTE acquired an interest in the lease by drilling on the lease. On * * * January 29, 1980, PAIUTE spudded well 24-15 on U-39711. Field tests completed on * * * February 24, 1980, showed that the well was a commercial producer. Volumetric reserve estimates completed on April 5, 1980, showed that the well was at its maximum depth, that the casing had been set and that the well was a commercial producer. On * * * June 9, 1980, USGS notified PAIUTE to plug and abandon the well. PAIUTE has corresponded with USGS since June 9, 1980, including filing a "Notice of Appeal" with the USGS in Salt Lake City on * * * September 2, 1980, which has been forwarded to the Director of the USGS (MMS). [1/] No response has been received from USGS to date. Although the USGS acknowledges the filing of the appeal in a letter to PAIUTE, dated September 22, 1980, an entry in the serial book of the Bureau of Land Management, dated April 17, 1980, shows that the lease was "terminated" and the file "closed."

On * * * March 22, 1982, PAIUTE submitted U-50859 for all of Section 24, T. 9 S., R. 17 E., Salt Lake Meridian, the same area as included within U-39711.

Meanwhile, the north half of sec. 24 had been included in the Castle Peak-Monument Butte known geologic structure (KGS) effective September 15, 1980.

Counsel for Paiute requests that BLM be ordered to grant a lease to Paiute as to all lands available for noncompetitive leasing within the lands covered by the lease offer U-50859, and that MMS continue to process the U-39711 appeal as to those lands not available for noncompetitive leasing within U-50859.

Counsel for Paiute states that the issues are whether a BLM lease which has been administratively terminated, but which is on appeal to MMS, can be simultaneously reviewed by this Board pursuant to a separate lease offer where the parties on appeal in U-39711 and U-50859 are the same; whether Paiute is entitled to the issuance of a lease pursuant to U-50859; and whether Paiute is entitled to priority as of March 22, 1982, the date of lease offer U 50859, as to lands available for noncompetitive lease within the exterior boundaries of sec. 24, T. 9 S., R. 17 E., Salt Lake meridian.

1/ The Minerals Management Service (MMS) has assumed the minerals-related functions of the Conservation Division of the Geological Survey (USGS) under the provisions of Secretarial Order No. 3071, dated Jan. 19, 1982. See 47 FR 4751 (Feb. 2, 1982).

[1, 2] In this case Survey determined that U 39711 had expired by operation of law at the end of its extended term. Paiute has appealed that determination to MMS. Regardless of the outcome of any appeal, the lands in question may not be leased pursuant to an over-the-counter noncompetitive oil and gas lease offer, and therefore, Paiute's offer properly was rejected by BLM.

Ultimate disposition of any appeal would result in the following, either U-39711 continues in existence or it is determined to have expired. If U-39711 survives, the lands in question would not be available for leasing. Any offer filed for such land would be rejected. Curtis Wheeler, 56 IBLA 58 (1981). Pursuant to 43 CFR 3112.1-1, all lands covered by leases which expire by operation of law at the end of their terms which are not within a KGS shall be subject to the filing of new lease offers only in accordance with simultaneous filing procedures. Curtis Wheeler, 64 IBLA 239 (1982). If U-39711 expired, the S 1/2 of sec. 24 would be available for leasing only through the simultaneous filing procedures of 43 CFR Subpart 3112. The N 1/2 of sec. 24 could only be leased competitively under 43 CFR Subpart 3120. 43 CFR 3101.1-1(a).

The lands in question are presently unavailable for leasing, 2/ and regardless of the determination on U-39711, the lands will not be available for leasing over-the-counter because they would either be included in an outstanding lease, or they would be available for leasing only under simultaneous or competitive procedures.

There is no provision for providing priority for its offer as requested by Paiute, and even if there was, there would be no reason to do so since, as we pointed out, no lands are or will be available in sec. 24 for over-the-counter oil and gas leasing.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

2/ Paiute indicates that the BLM official records show that U-39771 was "terminated" and the file "closed." Under the "notation rule," the land clearly would be unavailable for over-the-counter leasing. See Paiute Oil and Mining Corp., 67 IBLA 17 (1982).